THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 17402 of 2003

10-02-2006

Between:

The Oriental Insurance Company Limited rep.by its Senior Divisional Manager
Divisional Office No.II Above Dunlop Buildings,
Nampally, Hyderabad-500001.

..... PETITIONER

AND

1 M/s.Jayalakshmi Textiles rep.by A.Nagabhushanam
Wholesale Cloth Merchant, Jawahar Road, Nizamabad and another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 3699 of 2005

10-02-2006

Between:

M/s. Jayalaxmi Textiles, Rep. by its Proprietor A. Nagabushanam,

S/o. Narasimha, Aged about 45 Years, R/o. 3-5-92, Kotapalli, Nizamabad,
Nizamabad District.

..... PETITIONER

AND

1 The Insurance Ombudsman, Hyderabad, 5-2-47, 1st Floor, Yetory Towers,
AC Guards, Lakdikapool, Hyderabad. And another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NOs : 17402 of 2003 & 3699 of 2005

And C.C.No. 1399 of 2005

O R D E R:

These two writ petitions arise out of the order dated 06.05.2003 passed by the 2nd respondent-Insurance Ombudsman, Hyderabad on a complaint No. LO (Hyd) G-6119.

The contempt case has been filed by the petitioner in W.P.No.3699 of 2005 for the alleged violation of the interim order dated 12-09-2005, passed in WPMP No. 4981 of 2005 wherein this Court directed the 2nd respondent therein (Oriental Insurance Company Ltd.,) to pay an amount of Rs.3,57,283/- within a period of two months from the date of receipt of a copy of the order.

Since the three matters are inter-linked, they are being disposed of by this common order.

It is stated that on the intervening night of 10/11-02-2001 in the textile shop of the petitioner in W.P.No.3699 of 2005 under the name and style of Jayalaxmi Textiles, situated at 4-4-164, Jawahar Road, Nizamabad, a fire accident occurred due to electrical short circuit and that the stock in merchandise gutted in fire. Police registered a case in crime No.32/2001. M/s.Jayalakshmi Texites (hereinafter referred to as 'Insured') insured the stocks in trade with Oriental Insurance Company (hereinafter referred to as 'Insurer') for the period from 07.07.2000 to 06.07.2001. The total sum insured was Rs.12.66 lakhs. A claim has been made by the insured claiming an amount of

Rs.6,00,000/- for loss of stock in trade. In support its claim Photostat copies of supply bills have been submitted to the Insurer. The insurer appointed Mr.S.Mohan Reddy, Surveyor and Loss Assessor, to inspect the Insured business premises and assess the loss sustained by it. The Surveyor submitted a preliminary survey report dated 25.05.2001 and thereafter, one D.N.Reddy, Insurance Surveyor/Loss Assessor conducted final survey and submitted a report dated 27.12.2001 assessing the net loss at Rs.3,57,283/-. However, in spite of the said reports, the Insurer did not take any action and therefore, the Insured invoked the jurisdiction of Insurance Ombudsman by filing a complaint on 11.11.2002 claiming an amount of Rs.6,00,000/-. The Insurer resisted the claim of the insured. Basing on the pleadings of the parties, the learned Insurance Ombudsman allowed the claim of the Insured to the extent of Rs.3,57,283/-. The relevant portion of the order passed by the learned Insurance Ombudsman needs to be noted and it is thus:

> "In the case on hand, the insurer could not point out any defects or infirmities in the reports submitted by the surveyors. Both the surveyors have also clarified the doubts raised by the insurer as could be seen from the clarifications offered by the surveyors. If we examine the final surveyor's report, it would show that the surveyor had assessed the extent of stock on the date of the incident taking into consideration the remnants of stocks from which the surveyor could find out how many items of textile goods were burnt, water damaged textile items, partially damaged textile items and the textile items which were not damaged when the fire broke out in the business premises of the complainant/insured and the final surveyor had not based his report on the basis of the purchase bills submitted to the insurer and as such, nothing would turn out of the purchase bills or in other words, it would be futile exercise on our part to find out the genuineness of the bills or in other words, the bills were fabricated or fake because the surveyor had not based his assessment of the loss on the basis of the purchase bills and he based his report on the remnants of the stock of partially damaged stock alone and the bills had no role to play in, in the assessment of the stock position in the business premises as on the date of the fire incident in the textile shop of the complainant/insured. In the case on hand, the complainant had also not placed any acceptable and reliable material upon which we could act to find out that the complainant had stock worth Rs.6 lakhs on the date and at the time of the fire accident. It is also

> pertinent to note that nothing relevant was placed before the Insurance Ombudsman by the insurer to pick holes in the elaborate final surveyor's report assessing the net loss sustained by the complainant/insured which we could take into consideration safely to fix the quantum of amount payable by the insurer to the complainant/insured to indemnify the loss occasioned to the complainant from the fire peril…."

Assailing the order passed by the Insurance Ombudsman, the insurer (oriental Insurance Company) filed WP No.17402 of 2003 and whereas the insured (M/s. Jayalaxmi Textiles, rep. by its Proprietor A.Nagabhushanam) filed W.P.No. 3699 of 2005 seeking direction to the Insurer to comply the award dated 06-05-2003.

Heard Sri R.N.Hemendranathreddy, learned counsel appearing for the insured (M/s.Jayalaxmi Textiles), Sri R.Brizmohan Singh, learned Standing Counsel appearing for the insurer (Oriental insurance company) and learned counsel appearing for the Insurance Ombudsman.

The learned counsel for the insurer submits that the insured (M/s Jayalaxmi Textiles) rushed to the Insurance Ombudsman even before the insurer takes action on the report of the investigator. He further submitted that since the Photostat copies of bills produced by the insured have been found with alterations, apparently, inflating the value of purchases either by overwriting the figures or by adding some figures in between, directed the insured to place on record the original bills, for which the insured stated of non-availability of the originals, and therefore, the insurer had to necessarily appoint investigator to verify the insured version of loss as per guidelines for Assisting Disposal of claim. Before the Insurer act on the report of the investigator, the insured approached the Insurance Ombudsman and thus the proceedings initiated by the insured before the Insurance Ombudsman are premature.

The learned counsel appearing for the insured (M/s Jayalakxmi Textiles) submitts that the fire accident occurred on the intervening night of 10/11-02-2001 and the insured waited for nearly more than one year eight months, and having no option left, filed a complaint on

11-11-2001 by invoking the jurisdiction of the Insurance Ombudsman. In the circumstances, according to him, the insured cannot be found fault. He further submits that award has been passed by the Insurance Ombudsman under the statutory rules and therefore the writ petition by the insurer is not maintainable.

Certiorari under Article 226 of the Constitution is issued for correcting gross errors of jurisdiction i.e., when a subordinate Court is found to have acted (i) without jurisdiction-by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioned failure of justice; vide the decision of the Supreme Court in **Suryadev Rai Vs. Ramachandra Rao** ()

The learned Ombudsman has recorded specific finding that neither the insured nor the insurer substantiated the respective pleadings. Having observed so, proceeded to act upon the surveyor report and passed an award directing the insured to pay Rs,3,57,283/- .

A fact remains that the insured (M/s. Jayalaxmi Textiles) placed on record Photostat copies of purchase bills as proof of stock in trade available in the premises as on the date of the accident. The Insurer has come up with the specific plea that the photostat copies of the purchase bills submitted by the Insured contain overwriting and thus necessitated the appointment of investigator. The Insured approached the Insurance Ombudsman before any action is taken on the report of the investigator.

The Insured has not placed any material before the Insurance Ombudsman to substantiate its claim except the surveyors' reports acceptance of which has been deferred by the Insurer pending consideration of the report of the Investigator. Dehors the surveyors' reports, there is no other material placed before the Insurance Ombudsman by the Insured to substantiate its claim.

In that view of the matter, I am of the view that the order passed by

the Insurance Ombudsman directing the Insurer to pay Rs.3,57,283/- is based on no evidence and accordingly, the order of the Insurance Ombudsman is hereby set aside. However, since the fire accident occurred about five years ago and the claim of the insured is still pending without being finally settled, I deem it appropriate to direct the insurer (Oriental Insurance Company) to deposit ½ (half) of the amount of loss assessed by the surveyor within a period of fifteen days from the date of receipt of a copy of the order, giving liberty to the insurer to settle the claim taking into account the investigator's report. If any adverse findings are recorded by the investigator, an opportunity is to be required to be given to the insured to place on record material to substantiate its claim.

Accordingly, both the writ petitions are disposed of. No costs.

In view of the findings recorded in both the writ petitions, the contempt case is closed.

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10-02-2006

Mjl/*